MOHAMED HIDAYATULLAH v. TANG KEO EANG

[C.A. (Wee Chong Jin C.J., Tan Ah Tah and Choor Singh JJ.) October 27, 1971]

[Singapore — Civil Appeal No. 12 of 1971]

Landlord and Tenant — Recovery of possession — Lease for a term of years — Agreement to surrender tenancy — Whether equivalent to a notice to quit — Control of Rent Act (Cap. 266, 1970 Ed.) s. 15(1)(f).

The respondent, the owner of certain rent-controlled premises, by a lease demised the premises to the appellant for a term of six years commencing from April 1, 1964. On April 3, 1964, the appellant handed to the respondent's solicitors a signed notice to quit in the following terms: "I, M. Hidayatullah bin Mohamed Mohideen, for and on behalf of M.M.H. Sahib hereby give you notice that we shall quit and deliver up possession of the premises known as No. 306 North Bridge Road, Singapore, on or before the 31st day of March, 1970."

Upon the expiration of the term of the said lease, the appellant refused to deliver up possession of the premises. The respondent thereupon commenced an action in the High Court claiming possession of the premises and *mesne* profits from April 1, 1970. He relied on section 15(1)(f) of the Control of Rent Act.

The issue for determination was whether the notice to quit given by the appellant determined the tenancy held by the appellant under the said lease within the meaning of section 15(1)(f).

Held, allowing the appeal: the words "notice to quit" in section 15(1)(f) have a technical meaning. It must be effective to determine the tenancy against the will of the landlord. Thus, the notice to quit given by the appellant could not in law have determined the tenancy. It is settled law that when a lease is granted for a term of years, then at common law, upon the expiration of the last day of the term, the tenancy ends without notice to quit or other formality. Therefore, the tenancy had not been determined by the notice to quit given by the appellant, and the courts are precluded by section 14 of the Control of Rent Act from making or giving an order or judgment for the recovery of possession of the premises in question.

Observations on awarding of costs where fresh point taken before the Court of Appeal.

Cases referred to:-

(1) *Standingford* v. *Bruce* [1926] 1 K.B. 466.

(2) *De Vries* v. *Sparks* 137 L.T. 441.

(3) *Tan Cheng Wee* v. *Ng Hye Kok* [1966] 1 M.L.J. 209.

COURT OF APPEAL.

L. A. J. Smith for the appellant.

Cheong Yuen Hee for the respondent.

Wee Chong Jin, C.J. (delivering the judgment of the court): The respondent, the owner of rent-controlled premises No. 306 North Bridge Road, by a lease demised the premises to the appellant for a term of six years commencing from 1st April 1964. Two days later, on 3rd April 1964 the appellant signed and handed to the respondent's solicitors a notice to quit in the following terms: —

" Notice to Quit

I, M. HIDAYATULLAH BIN MOHAMED MOHIDEEN, for and on behalf of M.M.H. Sahib hereby give you notice that we shall quit and deliver up possession of the premises known as No. 306 North Bridge Road, Singapore, on or before the 31st day of March, 1970."

Upon the expiration of the term of the said lease the appellant refused to deliver up possession of the premises to the respondent who thereupon commenced an action in the High Court claiming possession of the premises and *mesne* profits from 1st April 1970 and relying on section 15(1)(f) of the Control of Rent Act (Cap. 266, 1970 Edition) which is in the following terms: —

"15(1). In the case of all premises such an order or judgment as is referred to in section 14 of the Act may be made in one of the following cases, namely:—

(f) where the tenancy has been determined by notice to quit given by the tenant;"

The short point for determination in this appeal is whether the notice to quit given by the appellant determined the tenancy held by the appellant under the said lease within the meaning of section 15(1)(f).

It is settled law that the essence of a notice to quit is to determine the tenancy, whether the other party likes it or not. In England, the English courts have decided that the words "notice to quit" in the English Rent Acts have a technical meaning and that an agreement to surrender or determine a tenancy is essentially different in its nature from a notice to quit (see *Standingford* v. *Bruce*;[1] *De Vires* v. *Sparks*.[2])

In the case of *Tan Cheng Wee* v. *Ng Hye Kok*[3] Buttrose J. on an appeal to the High Court held that an agreement by the tenant to vacate is not a notice to quit given by the tenant within the meaning of section 15(1)(f) and cited with approval *De Vries* v. *Sparks*, *supra*.

In our judgment, the words "notice to quit" in section 15(1)(f) have a technical meaning and unless the notice to quit relied on by the respondent was effective to determine the tenancy of the appellant under the said lease against the will of the respondent this appeal must succeed. In our opinion the notice to quit given by the appellant could not in law have determined the tenancy. It is settled law that when a lease is granted for a term of years, then at common law upon the expiration of the last day of the term, the tenancy ends without notice to quit or other formality (See *Hill and Redman's* Law of Landlord and Tenant, 14th Ed. at page 483). It follows therefore that the tenancy has not been determined by the notice to quit given by the appellant and the courts are precluded by section 14 of the Control of Rent Act (Cap. 266) from making or giving an order or judgment for the recovery of possession of the premises in question. The appeal is allowed.

The only question that remains to be dealt with is the question of costs. The point taken before us was not taken before the trial court nor was it contained in the petition of appeal. Leave was granted by us to argue this point at the hearing of the appeal as it was a point which goes to the jurisdiction of the court to make an order for possession. In all the circumstances our order is that the whole of the judgment of the court below be set aside, each party to bear its own costs in the court below and the appellant to have half his taxed costs of the appeal.

Appeal allowed.

Solicitors: *L. A. J. Smith; S. K. Lee & Co.*